

FILED

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NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

JOSE DE JESUS DIAZ CARDIEL; et al.,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-73848

Agency Nos. A95-447-545
A95-447-546
A95-447-547

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted May 24, 2006**

Before: PREGERSON, TALLMAN and CALLAHAN, Circuit Judges.

With respect to petitioners Jose De Jesus Diaz Cardiel, Agency No. A95-447-545, and Josefina Diaz, Agency No. A95-447-546, respondent's unopposed

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

05-73848

motion for summary disposition is construed as a motion to dismiss for lack of jurisdiction. So construed, the motion is granted. *See* 8 U.S.C. § 1252(a)(2)(B)(i); *Romero-Torres v. Ashcroft*, 327 F.3d 887, 892 (9th Cir. 2003); *Montero-Martinez v. Ashcroft*, 277 F.3d 1137, 1144 (9th Cir. 2002).

Respondent's unopposed motion for summary disposition is granted as to petitioner Victor Antonio Diaz Flores, Agency No. A95-447-547, because the questions raised by this petition for review are so insubstantial as not to require further argument. *See* 8 U.S.C. § 1229b(b)(1)(D) (requiring alien to show that "removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence."); *Molina-Estrada v. INS*, 293 F.3d 1089, 1093-94 (9th Cir. 2002) (denying cancellation of removal where alien lacked a qualifying relative under the statute); *United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). Accordingly, this petition for review is denied with respect to petitioner Victor Antonio Diaz Flores, Agency No. A95-447-547.

PETITION FOR REVIEW DENIED IN PART AND DISMISSED IN PART.

PREGERSON, Circuit Judge, dissenting:

I dissent. This case, and the sixty-four others like it filed today, will have an adverse effect on children born in the United States whose parent/parents are illegal

immigrants. When a parent is denied cancellation of removal, the government effectively deports the United States-born children of that parent. This unconscionable result violates due process because circumstances will force children to suffer de facto expulsion from the country of their birth or forego their constitutionally protected right to remain in this country with their family intact. *See, e.g., Moore v. City of E. Cleveland*, 431 U.S. 494, 503-05 (1977) (plurality opinion) (“Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation’s history and tradition.”); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (recognizing that “[t]he integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment”).

Furthermore, as a nation we should recognize that many children born of illegal immigrants serve and have served with honor and distinction in our military forces, and many have laid down their lives on the altar of freedom.